IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.Rev.Pet.No. 1057 of 1999()

CRA.91/1999 of SESSIONS COURT, THODUPUZHA
CC.162/1992 of JUDL. MAGI. OF FIRST CLASS-I (FOREST OFFENCES), THODUPUZHA

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REVN. PETITIONER: APPELLANT/ACCUSED

SOMAN, AGED 40 YEARS
S/O.KRISHNAN
KANIYAMPARAMBIL HOUSE
CHURULYAKARA, KANJIKUZHY VILLAGE.

BY ADV. SRI.S.K.MURALEEDHARA KAIMAL

RESPONDENTS: RESPONDENT/COMPLAINANT

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1. STATE OF KERALA
   REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE
   KANHIKUZHY POLICE STATION
   IDUKKI DISTRICT.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP1057/99

ORDER ON CRL.M.P.NO.4862/1999 IN CRL.R.P.NO.1057/99

DISMISSED

28.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.1057 of 1999

Dated this the 28th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 3 read with 25(1)(B) of Indian Arms Act and sentenced to undergo simple imprisonment for three years.

2. The prosecution case is that on 4.2.1988 at 10 p.m. the accused was found in possession of a single barrel gun without any license at Churuli Kara in Kanjikuzhi Village on the Idukki-Adimali Public road.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 7 and Exts. P1 to P3 that included in the mahazar, sanction for prosecution and the scientific report and MO1 gun. Of the prosecution witnesses PWs' 1 and 2, the witnesses of the mahazar, did not support the prosecution and turned hostile. PW3 is the police driver who has stated about his acquaintance with the accused and has deposed in support of the prosecution version. It is his version that at the time the Sub Inspector and police party were returning after attending a crime

conference. PW4 is the ASI was also in the police party at the time of the detection of the offence. He was also signatory of Ext. P1 mahazar and has identified the gun and the accused has deposed in support of the prosecution version. PW5 is an independent witness to the scene mahazar. He has testified that he affixed the signature in Ext. P1 mahazar at the spot. PW6 is the police constable who was also in the police party at the time. He has also supported the prosecution version. PW7 is the Sub Inspector who has verified the charge and submitted the same before the court.

4. The main contention raised by the counsel for the revision petitioner is that the investigating officer was not examined and hence, could not bring out the falsity of the prosecution version. I find that the evidence of witnesses supporting the prosecution stands not impeach and no contradiction with their previous statement has been brought out in the cross examination. In the circumstances, I find that the non-examination of the investigation officer as such is not a ground to suspect the prosecution version. No prejudice caused to the accused has been caused. I find that the above contention

has no merits.

5. The contention that Ext. P3 report of the scientific assistant with respect to the gun has not been properly proved also cannot be upheld as the report of the scientific assistant he is countersigned and hence, it is admissible under Section 293 of Crl.P.C. In the circumstances, I find that there is no scope for interference in the concurrent findings of the court below. The conviction is confirmed.

6. The counsel has pleaded for leniency pointing out that the incident has taken place in February 1988 and about 18 years have elapsed since the commencement of the proceedings. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- to the complainant and in default, to undergo simple imprisonment for six months. The revision petitioner shall appear before the JFCM-I, Thodupuzha on 30.7.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl